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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,270	07/06/2001	Edward M. Maslowski	43795-00307	3916

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EXAMINER
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ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/17/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/899,270

Applicant(s)

MASLOWSKI, EDWARD M.

Examiner

Niki M. Eloshway

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Maihofer (U.S. 5,823,340). Maihofer teaches a reusable plastic drum, shown in figure 9 (see col. 8 lines 4-6), having a plastic drum body 1, a lid 2 (see lines 5-8 of the Abstract) and a lockband 3'. The lid flange is element 16' and the drum body flange is element 17'. The auxiliary gasket is element 20'. As can be seen in the right hand side of figure 9, the panel is located below the channel.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maihofer in view of Cramer et al. (U.S. 5,573,118). Maihofer discloses the claimed invention except for the drum body and lid being made of polypropylene. Cramer et al. teach that it is known to provide a drum body and lid made of polypropylene (see col. 4 lines 26-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the drum of Maihofer with the drum body

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and lid being made of polypropylene, as taught by Cramer et al., in order to give the drum the strength and rigidity characteristic of polypropylene.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maihofer. Maihofer discloses the claimed invention except for the width of the chime being 0.190 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the drum of Maihofer with the chime having a width of 0.190 inch, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

6. To the degree that it is argued that Maihofer teaches a panel which is located below the channel, claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maihofer in view of Hammes (U.S. 4,347,947). Hammes teaches that it is known to provide a lid with a panel located below the channel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Maihofer with the panel being below the channel, as taught by Hammes, in order to stably receive the bottom wall of a container stacked thereon.

Regarding claim 4, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the drum of Maihofer with the chime having a width of 0.190 inch, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maihofer in view of Hammes, as applied to claim 1 above, and further in view of Cramer et al. (U.S. 5,573,118). The modified device of Maihofer discloses the claimed invention except for the drum body and lid being made of polypropylene. Cramer et al. teach that it is known to provide a drum body and lid made of

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polypropylene (see col. 4 lines 26-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified drum of Maihofer with the drum body and lid being made of polypropylene, as taught by Cramer et al., in order to give the drum the strength and rigidity characteristic of polypropylene.

### ***Response to Arguments***

8. Applicant's arguments filed December 18, 2003 have been fully considered but they are not persuasive. Applicant argues that Maihofer discloses a mating channel disposed below the panel. The embodiment in figure 9 shows a portion of the panel located below the channel. Therefore, the channel is disposed above the panel, to the degree set forth in claim 1.

9. Applicant states that the mating channel of the lid of Maihofer has a radius greater than that of the upper chime. Although Maihofer teaches that the radius of 2a is greater than the radius of 5a, this does not prevent the Maihofer reference from meeting the limitations of the claims. Claim 1 sets forth that the concave radius of the base surface "is matched to" the convex chime radius. This limitation does not require that the radii are equal or identical. The phrase "is matched to"; is broad enough to encompass radii which are aligned or mating, such as the radii of Maihofer. For this reason, it is the examiner's position that Maihofer meets the limitation that the base surface has a concave radius which is matched to the convex chime radius.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the


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mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.

  
Niki M. Eloshway/nme  
Patent Examiner  
March 12, 2004

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER.  
3/14/04